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10/509,746	12/23/2004	Francois Quetel	Q83748	4368
23373 7590 05/28/2008 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER				
DOE, SHANTA G				
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1797				
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/509,746

**Applicant(s)**

QUETEL ET AL.

**Examiner**

SHANTA G. DOE

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 January 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 8-16 is/are rejected.
- 7) ☒ Claim(s) 7 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

## **DETAILED ACTION**

### ***Response to Arguments***

1. Applicant's arguments filed January 24 2008 have been fully considered but they are not persuasive. The applicant's argument that method of Swank was not intended to treat containers provided with open neck and/or preform neck specifically was not found persuasive because the examiner used Swank to show that a method for decontaminating/sterilizing partially formed material (20) (preforms), wherein, as the partially formed material are fed one after the other into a container manufacturing unit, the partially formed materials pass first through an upstream chamber (sterilization chamber (28)) into which hydrogen peroxide is sprayed (liquid hydrogen peroxide is vaporized at 175 degrees in the presence of air/air is saturated with hydrogen peroxide vapor the mixture exits the spray nozzle at 80 - 90 degrees and it is known that air saturated with  $H_2O_2$  vapor forms condensation droplets of  $H_2O_2$  in air (mist or fog) when temperature decreases) continuously so as to maintain in this chamber a fog atmosphere of said decontaminating product with which the necks of the preforms are brought into contact, and then pass in front of ultraviolet lamps arranged so as to completely irradiate the necks of the partially formed materials wetted by the decontaminating product for at least a minimum predetermined period of time, before reaching a device that loads them into the manufacturing unit was known in the art and that it would have been obvious to combine Swank and the applicant's admitted prior art as indicated in the previous office action and in the rejection below. Furthermore, the preforms of the Swank reference do have necks (64, see fig 3) and hence the method of Swank is intended to treat preforms with necks. Additionally, the applicant's arguments that there is no fog chamber upstream the UV lamp and that the hydrogen peroxide

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applicator is not housed in any particular chamber was not found persuasive. The examiner respectfully disagrees with the applicant's argument above because as stated in the previous office action the applicator 30 which creates fog is housed in the chamber 28 upstream to the chamber 38 which houses the UV lamp.

### ***Double Patenting***

2. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

3. Claims 9-16 are objected to under 37 CFR 1.75 as being a substantial duplicate of claim claims 1-8 respectively. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459

(1966), that are applied for establishing a background for determining obviousness under 35

U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

6. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

7. Claims 1 – 3 and 9-11 are rejected under 35 U.S.C. 103(a) as being unpatentable over the admitted prior in view of Swank et al (US 6,183,691).

Regarding claims 1 and 9, the applicant admits that it is a known practice in the manufacture of decontaminated containers out of thermoplastic by blow molding or stretch-blow molding, to decontaminate the preforms (preforms are made by molding them with their necks in the final shape and having final dimensions) rather than finished container and also that it was known to use UV radiation and/ hydrogen peroxide (in liquid or atomized form) to decontaminate these

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performs (partially formed container or materials)( see applicant's specification page 1 line 1 - page 3 line 20). The applicant does not disclose that there is known method comprising, feeding the performs one after the other into a container manufacturing unit, spraying an upstream chamber through which the preforms pass with a decontaminating liquid sprayed continuously so as to maintain in this chamber a fog atmosphere of said decontaminating liquid so as to contact necks of the preforms and passing the preforms in front of ultraviolet lamps arranged so as to completely irradiate the necks of the preforms wetted by the decontaminating product for at least a minimum predetermined period of time, before reaching a device that loads them into the manufacturing unit.

However, Swank ('691) discloses a method for decontaminating/sterilizing partially formed material (20), wherein, as the partially formed material are fed one after the other into a container manufacturing unit, the partially formed materials pass first through an upstream chamber (sterilization chamber (28)) into which hydrogen peroxide is sprayed (liquid hydrogen peroxide is vaporized at 175 degrees in the presence of air/air is saturated with hydrogen peroxide vapor the mixture exits the spray nozzle at 80 - 90 degrees and it is know that air saturated with H2O2 vapor forms condensation droplet of H2O2 in air (mist or fog)when temperature decreases) continuously so as to maintain in this chamber a fog atmosphere of said decontaminating product with which the necks of the preforms are brought into contact, and then pass in front of ultraviolet lamps arranged so as to completely irradiate the necks of the partially formed materials wetted by the decontaminating product for at least a minimum predetermined period of time, before reaching a device that loads them into the manufacturing unit( see Swank ('691) abs; fig. 2; col. 4 lines 40 - 65; col. 5 lines 30-40 and col. • 6 lines 47 - 63). It would have

been obvious to one having ordinary skill in the art at the time the invention was made to use the decontaminating procedure taught by Swank in the known manufacturing practice as admitted by applicant since Swank discloses that it was known in the art to use such procedure to decontaminate partially formed container/material (preforms) and stated at col. 4 lines 60 - 65 that such a modification provides for a synergistic sterilization effect between the UV radiation and hydrogen peroxide.

Regarding claims 2 and 10, the combined references disclose the method as claimed in claim 1, wherein the fog is kept flowing through the upstream chamber (28) (hydrogen is sprayed in the form of fog or mist continuously in the sterilization chamber) so as to facilitate its renewal (see Swank col. 4 lines 40 - 65; col. 5 lines 30-40).

For claims 3 and 11, the combined references disclose the method as claimed in claim 1 wherein the decontaminating product is hydrogen peroxide  $H_2O_2$  (see Swank abs.; Quetel [0003])

8. Claims 4, 5, 8, 12, 13 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marchau et al (WO 99/03667) in view of admitted prior art and Swank et al (US 6,183,691).

Regarding 4 and 12, Marchau discloses an installation (system) for the decontamination while they are moving of the necks of preforms (3) delivered one after the other to a loading device (see fig 1), said preforms being made of thermoplastic and being intended for making into containers (e.g. bottle (110)) by blow molding or stretch-blow molding, said decontamination

installation being structurally and functionally connected to a perform feeder installation (2) comprising means for moving the performs one after the other; the decontamination installation contains a means of spraying(sprayer 45) the perform with hydrogen peroxide to decontaminate and lamps(104) said perform (Marchau(WO 99/03667 fig 1 page 3 paragraph 5; page 5 paragraph 2; page 6 paragraph 8; page 7 paragraph 1-4; page 11 paragraph 2). However Marchau does not disclose a installation for decontaminating preforms wherein said decontamination installation comprising ultraviolet lamps arranged so that the ultraviolet radiation completely irradiates the necks of the moving preforms, wherein the decontamination installation also includes, upstream of the ultraviolet lamps, a chamber traversed by said preform movement means of the feeder installation and in which means are provided for spraying (sprayer 45 above the preform movement means) a decontaminating product in such a way as to maintain a fog of the decontaminating product inside said chamber. Swank ('691) discloses a decontaminating/sterilizing system (installation) for partially formed material (20), wherein, as the partially formed material are fed one after the other into a container manufacturing unit, the partially formed materials pass first through an upstream chamber (sterilization chamber (28)) into which hydrogen peroxide is sprayed (liquid hydrogen peroxide is vaporized at 175 degrees in the presence of air/air is saturated with hydrogen per oxide vapor the mixture exits the spray nozzle at 80 - 90 degrees and it is know that air saturated with H<sub>2</sub>O<sub>2</sub> vapor forms condensation droplet of H<sub>2</sub>O<sub>2</sub> in air(mist or fog) when temperature decreases) continuously so as to maintain in this chamber a fog atmosphere of said decontaminating product with which the necks of the preforms are brought into contact, and then pass in front of ultraviolet lamps arranged so as to completely irradiate the necks of the partially formed materials wetted by the decontaminating



product for at least a minimum predetermined period of time, before reaching a device that loads them into the manufacturing unit(see Swank ('691) abs; fig. 2; col. 4 lines 40 - 65; col. 5 lines 30-40 and col. 6 lines 47 - 63).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the decontamination installation of Marchau with the decontamination system taught by Swank since Swank disclosed that it was known in the art at the time the invention was made to use such an installation to decontaminate partially formed container in a fabrication process stated at col. 4 lines 60 - 65 that such a modification provides for a synergistic sterilization effect between the UV radiation and hydrogen peroxide.

For claims 5 and 13, the combined references disclose the installation as claimed in claim 4, wherein there is a sprayer with it a respective ax aimed roughly in the direction of the necks of the moving preforms (see fig 1). However the combination does not disclose the installation of claim 4 wherein the spray means comprise at least two spray nozzles arranged one on either side of the preform movement means and above these, with their respective axes aimed roughly in the direction of the necks of the moving preforms. However, the applicant admits that it is conventional to place the neck of each preform under a decontaminant source to decontaminate the neck of preform wherein the decontaminate source are distributed on either side of the perform movement means (see applicant's specification page 2 lines 5 -line 20). Swank ('691) discloses a decontamination installation comprising applicators / sprayers (30A and 30B) which may be nozzle for spraying hydrogen peroxide (see Swank col. 6 lines 47 - 63). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have

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the sprayers of the hydrogen peroxide (decontaminant source) of the combined references be arranged one on either side of the preform movement means and above these, since it was conventional to do so as admitted by the applicant. Further more it would have been obvious to use a nozzle as the spraying means since it is well known in the art to use nozzle as a spaying means.

For claims 8 and 16, the combined references disclose the installation as claimed in claim 4. The combination does not disclose the installation of claim 4 wherein the preform movement means comprise an inclined slideway down which the preforms slide by gravity one after the other and in that this slideway passes through the chamber'. However, the applicant admits that it is known in the art to use a preform movement means comprising an inclined slideway down which the preforms slide by gravity one after the other in a decontamination installation (see applicant's specification page 2 lines 5 - line 20). It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the feeding means taught in the admitted prior art since it was known in the art at the time as a conventional preform movement means.

9. Claims 6 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Marchau et al (WO 99/03667) in view of the admitted prior art and Swank et al (US 6,183,691) as applied to claim 4 above, and further in view of Zelina et al (US 2002/0159915 A1 ).

Regarding claims 6 and 13, the combined references as applied to claim 4 above disclose the installation as claimed in claim 4. The combination does not disclose the installation of claim 1

further comprising suction means connected to the chamber in order to create a flow through the chamber such as to prevent local accumulations of the decontaminating product in suspension.

Zelina discloses a chamber used for decontamination with hydrogen peroxide where suction means (such as a blower (a blower will create a flow), vacuum pump or vent) is connected/provided (see Zelina paragraph [0051]).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to connect a suction mean to the hydrogen peroxide decontamination chamber of-the combine reference as taught by Zelina, since Zelina states in paragraph [0051] that such a modification help to get rid of the spent decontaminate with in the decontamination chamber.

*Allowable Subject Matter*

10. Claim 7 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

11. The following is a statement of reasons for the indication of allowable subject matter: Claim 7 is indicated as allowable because the installation as claimed in claim 4, wherein the preform movement means are surmounted, above the necks of the preforms, by a rod of relatively small transverse dimension relative to the diameter of the necks could not be found in the prior art.

***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to SHANTA G. DOE whose telephone number is (571)270-3152. The examiner can normally be reached on Mon-Fri 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Walter Griffin can be reached on 571-272-1447. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

GSD

/Walter D. Griffin/  
Supervisory Patent Examiner, Art Unit 1797